

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07

INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06

OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01

FEA-01 /115 W

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P 201934Z AUG 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 8782

S E C R E T USUN 3355

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJ: STATUS OF COMMITTEE I NEGOTIATIONS

1. THE GROUP OF 77 INTRODUCED TODAY IN THE COMMITTEE I WORKSHOP ITS PROPOSALS FOR ARTICLE 22, 23 AND PARAGRAPHS 2, 7 AND 8 OF ANNEX I (BASIC ARTICLES ON THE SYSTEM OF EXPLOITATION). THESE ARTICLES (TRANSMITTED SEPTTEL) TAKEN TOGETHER IN EFFECT DESTROY ANY AUTOMATICITY OF STATE AND PRIVATE PARTY ACCESS IN A DUAL SYSTEM OF EXPLOITATION. IN PRESENTING THESE ARTICLES, THE GROUP OF 77 MADE SPECIAL NOTE THAT IN ADDITION TO THESE PROVISIONS, THEY WOULD WISH TO NEGOTIATE: (A) THE FUNCTIONING OF THE ENTERPRISE: (B) POWERS AND FUNCTIONS OF THE ASSEMBLY AND COUNCIL AND THE RELATIONSHIP THEREOF; (C) THE DEFINITION OF ACTIVITIES IN THE AREA INCLUDED IN ARTICLE I; AND (D) OTHER RELATED ASPECTS OF THE REVISED SNT.

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2. THE US DELEGATION IS NOT PRESENTLY AUTHORIZED TO

COMMENCE NEGOTIATIONS ON THE BASIS OF THE GROUP OF 77 TEXT. WE DO NOT PLAN TO REQUEST SUCH AUTHORIZATION BECAUSE TO DO SO WOULD ENSURE THAT WE WOULD BE FORCED TO ACCEPT A RESULT ON ACCESS LESS FAVORABLE THAN WHAT IS ALREADY IN THE REVISED SNT. MOREOVER, WITH THE CLEAR INDICATION THAT THE GROUP OF 77 HAS ADDITIONAL HARDLINE POSITIONS IN STORE FOR US ON OTHER IMPORTANT PROVISIONS IN THE COMMITTEE I PACKAGE, WE CANNOT AFFORD TO BEGIN MAKING COMPROMISES ON A PARTIAL PACKAGE ONLY TO BE FACED WITH MORE DEMANDS AT A LATER TIME. THE KEY DIFFICULTY IS THAT AIECEMEAL NEGOTIATION WILL INEVITABLY LEAD TO OUR BEING COMMITTEE IN PRINCIPLE TO PARTS OF A NEW SNT FOR COMMITTEE I WHICH IN MANY OTHER RESPECTS IS TOTALLY UNACCEPTABLE.

3. ON THE OTHER HAND, IF WE REFUSE TO NEGOTIATE WITH THE 77 ON THE BASIS OF A PARTIAL PACKAGE, INSISTING THAT THEY IDENTIFY AND DEVELOP POSITIONS ON EVERY PROVISION ON THE REVISED SNT WHICH THEY CANNOT ACCEPT, THE REST OF THIS SESSION WILL IN ALL LIKELIHOOD BE DEVOTED TO MEETING OF THE 77. AT THE CLOSE OF THE SESSION, WE WOULD HAVE BEFORE US A GROUP OF 77 SUPPORTED SNT AND MAY IN FACT HAVE MOTIVATED THE 77 TO MAKE MORE CHANGES TO THE TEXT THAN COULD OCCUR WITHIN THE CONTEXT OF A PIECEMEAL NEGOTIATION.

4. THE US DELEGATION HAS CONCLUDED THAT WE WILL ADOPT A FIRM TACTICAL STANCE IN THE COMMITTEE I WORKSHOP, FACTUALLY EXPLAINING BASIC US POSITIONS AND OUR RESERVATIONS ABOUT THE PARTIAL PACKAGE OF THE GROUP OF 77 AMENDMENTS WE HAVE IN HAND.

5. THE FOLLOWING ARE A FEW OF THE MAJOR PROBLEMS WE FIND WITH THE GROUP OF 77 PROPOSALS BUT ARE IN NO WAY THE ONLY SERIOUS CONCERNS WE HAVE CONCERNING THESE DRAFTS.

A) ARTICLE 22. THE WORD "EXCLUSIVELY" IN THE FIRST LINE OF PARAGRAPH 1 IMPLIES CONTROL BY THE AUTHORITY OVER ALL STAGES OF MINING, PROCESSING AND MARKETING OF MINERALS FROM THE SEABED. THE LINK BETWEEN SUBPARAGRAPH 1 (I) AND

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1 (II) IS THE WORD "OR" WHICH GIVES TO THE AUTHORITY COMPLETE DISCRETION AS TO WHETHER ACTIVITIES IN THE AREA WILL BE UNDERTAKEN BY ENTITIES OTHER THAN THE ENTERPRISE. THE OPENING PHRASE IN PARAGRAPH 1 (II), "AS DETERMINED BY THE AUTHORITY", UNDERLINES THE AUTHORITY'S DISCRETIONARY POWER. PARAGRAPH 4 OF ARTICLE 22 GIVES THE AUTHORITY "FULL AND EFFECTIVE CONTROL" OVER ACTIVITIES IN THE AREA "AT ALL TIMES". THIS COULD BE THE BASIS FOR THE HORIZONTAL

AS WELL AS VERTICAL EXTENSION OF THE AUTHORITY'S POWERS.

B) ARTICLE 23. PARAGRAPH 2 OF ARTICLE 23 REMOVES ANY CONSTRAINTS ON THE KINDS OF SPECIAL CONSIDERATIONS THAT MAY BE GIVEN TO DEVELOPING COUNTRIES.

C) ANNEX 1. PARAGRAPH 2 DOES NOT SPECIFY THAT THE TITLE OF SEABED MINERAL PASSES FROM THE AUTHORITY UPON RECOVERY FROM THE SEABED. PARAGRAPH 7 (C) (IV) ADDS A NEW REQUIREMENT FOR APPLICANTS, I.E., THAT THEY UNDERTAKE TO PROMOTE THE INTERESTS OF DEVELOPING COUNTRIES THROUGH JOINT VENTURES. PARAGRAPH 8 REMOVES THE ENTERPRISE FROM THE RULES AND REGULATIONS OF ANNEX 1 THEREBY OPENING THE WAY FOR MORE FAVORABLE TREATMENT THAN THAT ACCORDED STATE OR PRIVATE PARTIES. THE CHAPEAU IN ARTICLE 8 AGAIN UNDERLINES THE DISCRETIONARY POWERS OF THE AUTHORITY. THE REST OF THE ARTICLE CONTAINS NUMEROUS UNACCEPTABLE ITEMS INCLUDING NO SPECIFIED TIME LIMIT WITHIN WHICH THE AUTHORITY MUST ACT UPON APPLICATIONS, PROVISIONS THAT PRIVATE OR STATE OPERATORS MAY NOT COMPETE WITH THE ENTERPRISE OR LDCS, A COMPETITIVE BIDDING SYSTEM WITH NO CLEAR CRITERIA FOR AWARDED CONTRACTS, AND A PROVISION (PARAGRAPH 8 (E) (I)) WHICH ALLOWS THE ENTERPRISE ALMOST COMPLETE DISCRETION TO CHOOSE AREAS FOR ITS OWN USE FROM AMONG AREAS ALREADY EXPLORED AND EVALUATED BY CONTRACTORS. PARAGRAPH 8 F FURTHER INCREASES THE POWER OF THE AUTHORITY TO DICTATE TERMS TO THE CONTRACTORS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SEABED, LAW OF THE SEA, COMMITTEES, NEGOTIATIONS, EXPLOITATION (NATURAL RESOURCES), AMENDMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 20 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN03355
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760320-0353
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760832/aaaabblp.tel
Line Count: 143
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DLOS
Original Classification: SECRET
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 17 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17 MAY 2004 by greeneet>; APPROVED <02 NOV 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: STATUS OF COMMITTEE I NEGOTIATIONS
TAGS: PLOS, GROUP OF 77
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006